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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 346 of 2001

in

SPECIAL CIVIL APPLICATION No 1595 of 1989

with

Letters Patent Appeal

Nos. 140 of 2001 and 462 of 2001 to 465 of 2001

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

and

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the Order? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the Order? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UMAKANT S DESHPANDE

Versus

G E B

Appearance: PARTY-IN-PERSON for the Appellant.

MR MD Pandya for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

and

MR.JUSTICE P.B.MAJMUDAR

Date of Order: 03/08/2001

C.A.V. ORDER

(Per : MR.JUSTICE P.B.MAJMUDAR)

1. All these Letters Patent Appeals are filed against a common judgment of the learned single Judge dated 10th May, 2000, by which the learned single Judge disposed of a group of Special Civil Applications by a common order. So far as L.P.A.No.346 of 2001 is concerned, the same is filed by the party-in-person U.S. Deshpande and the remaining Letters Patent Appeals are filed by Advocate Mr.N.K. Thakkar.

We have heard at length the party-in-person as well as Mr.N.K.Thakkar. Mr.Thakkar has given written submissions which are also taken on record.

2. The main question which is required to be decided in these Letters Patent Appeals is whether Accounts Officers under the Electricity Board fall within the definition of `workman', as defined under Section 2(s) of the Industrial Disputes Act, 1947. The Industrial Tribunal, Ahmedabad, by its judgment and Award dated 15.7.1988, decided that the Accounts Officers are `workmen', within the meaning of the Industrial Disputes Act and, thereby, entitled to the benefits of the Settlement under Section 2(p) of the I.D. Act. By the said settlement, workmen employed by the Board are permitted to continue in the Board till they attain the age of 60 years. The respondent-Board challenged the said Award by filing Special Civil Application Nos. 5797 to 5802 of 1988, 6869 of 1989, 2924 of 1990, 8144 and 12476 of 1993. In the meanwhile, certain petitions were directly filed under Article 226 of the Constitution of India by some Accounts Officers, who had not approached the Industrial Tribunal and, therefore, the contention before the learned single Judge was that they were entitled to continue in service till they attained the age of 60 years. Those petitions are Special Civil Application Nos. 331 and 1595 of 1989, 350, 1013, 1015 and 1074 of 1990, 733 of 1991, 7644 of 1992 and 2590 of 1993. It seems that after the judgment of the Industrial Tribunal on 15.7.1988, the Gujarat Electricity Board, over and above challenging the said judgment and Award, also amended the Statutory Regulations laying down that all Officers in the Class I service, including Accounts Officers, shall retire at the age of 58 years and hence, the Accounts Officers, who had to retire after coming into force of the said amendment, filed the third group of petitions, viz., Special Civil Application Nos. 8508, 9850 and 10661 of 1996. The aforesaid groups of petitions were disposed of by the learned single Judge and by order dated 10.5.2000, Awards of the Industrial Tribunal, by which the said Tribunal had held that the Accounts Officers are `workmen' and the retirement age of the Accounts Officers under the Gujarat Electricity Board is 60 years, were quashed and set aside. Accordingly, the petitions filed by the Gujarat Electricity Board, being Special Civil Application Nos. 5797 of 1988 to 5802 of 1988, 6869 of 1989, 2924 of 1990 and 8144 and 12476 of 1993 were allowed by the learned single Judge and rule was made absolute in those petitions with no order as to costs.

So far as Special Civil Application Nos. 331 and 1595 of 1989, 350, 1013, 1015, 1074 of 1990, 733 of 1991, 7644 of 1992, 2590 of 1993 and 8505, 9850 and 10661 of 1996, which were filed by the Accounts Officers, are concerned, they were dismissed and rule was discharged in each of the matters. The learned single Judge, however, observed in the order that those Accounts Officers, who continued in service till the age of 60 years on the strength of the interim orders / final Awards of the Industrial Tribunal shall not be required to refund any monetary benefits which were drawn by them by rendering services till the age of 60 years.

3. Being aggrieved by the said judgment of the learned single Judge, party-in-person U.S. Deshpande filed Letters Patent Appeal No.346 of 2001, challenging the order of the learned single Judge in Special Civil Application No.1595 of 1989. Letters Patent Appeal Nos. 140, 462, 463, 464 and 465 of 2001 are filed against the order passed in Special Civil Application Nos. 5720 of 1988, 2924 of 1990, 1015 of 1990, 9850 of 1996 and 8508 of 1996. Accordingly, the present six Letters Patent Appeals are filed against the common order of the learned single Judge. In all these appeals, the contention on the part of the appellants is that the appellants were `workmen' within the meaning of the Industrial Disputes Act and that the Accounts Officer is a `workman' and, therefore, as per the settlement, the workman was entitled to serve upto 60 years and he was not required to be superannuated at the age of 58 years.

4. In the affidavit filed by the Board in the Special Civil Applications, duties of the Accounts Officers and the staff pattern of the respondent-Board are set out. The said averments, inter alia, read as under :-

> " ... ...
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> 5.2 The Accounts Officers employed by the Board can be broadly divided into four categories :
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> a) Accounts Officer (Revenue)
> b) Accounts Officer (Expenditure)
> c) Accounts Officer (Internal Audit)
> d) Accounts Officer (EDP)
>
> (A) Functions of Accounts Officers (Revenue)

The functions and duties of the Accounts Officer (Revenue) is to supervise and control the functions of his subordinates and the functioning of Division and Sub-division offices working under him. This aspect can be explained as under :-

The Board is functioning through its various sub-division offices spread over the entire State of Gujarat. At each Sub-Division the particular staff is provided for meter reading for the purpose of raising bills to the consumers. The bills prepared thereafter are sent to the billing department, where junior clerks and senior clerks will enter the data in the Consumer General Ledger. Over these Sub-divisions there is a division which is supervising and controlling the functions of Sub-divisions. Accounts staff provided at division office carry out the accounting of consumer's account, payment position and the arrears. Over the division office there is a circle office which is supervising and controlling as well as monitoring the functioning of Division and Sub-Divisions working under the Circle office. Accounts Officer (Revenue) who is posted at the Circle Office has to supervise, monitor and control the working of the meter reader, billing clerks and ledger clerks working at Sub-Divisions level as well as Division Level. The Accounts Officers have to ensure whether the revenue is realized as per the assessment made by Sub-Division/Divisions Offices. A copy of Circular No.90 dated 24.6.1968, vide which duties functions of the Accounts Officer (Revenue) are assigned is at Annexure A/1 to the affidavit. The Accounts Officer further has to periodically inspect the working of the Accounts Section at Sub-Divisions and Division Offices of the Board. The Accounts Officers have to give direction to the concerned officers for improvement of the functioning of Sub-Divisions and Division Offices. The said fact is evident from the inspection report dated 16.12.1996 of the Board which is at Annexure A/2 to the affidavit. The Accounts Officer is

> also empowered to hold meeting of the Divisional Accountants and Assistant Accountants working under him and have to guide them for proper working.
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> It would not be out of place to mention that the life blood of Board for survival is the Revenue earned from the various O&M Circles. These O&M Circles have Division Offices and the Accounts Officer (Revenue) monitor these Divisional Offices from Circle Offices. At the Circle Offices, generally the work bifurcation/allotment for the staff working under the control of Accounts Officer (Revenue) is done as per Annexure A-2-1 to the affidavit. Therefore, the nature of duties and the work performed by the Accounts Officer (Revenue) include managerial and administrative.
>
> ... ..."

5. On behalf of the appellants, it was argued by the party-in-person as well as by Mr.Thakkar, learned Advocate, that the appellants were not doing any supervisory work and, in fact, they were discharging clerical type of work. The Tribunal came to the conclusion that an employee doing any manual, unskilled, skilled, technical, operational, clerical or supervisory work will be a `workman' unless he is doing supervisory work and his functions are mainly of managerial nature. The Tribunal came to the conclusion that the Accounts Officers are required to scrutinise the general vouchers prepared by the staff, to scrutinise the local purchase orders / tenders, to scrutinise the T.A. bills and final bills and to scrutinise the claims of C.P.F. advance, etc., to scrutinise the settlement of C.P.F. Claims (final), to submit monthly returns to Head Office and to check reconciliation of transactions and to check quarterly/annual trial balances prepared by the staff, etc. The Tribunal came to the conclusion that the Accounts Officer has no authority to discharge a person from service, neither the Accounts Officer has any power to take disciplinary action against the employee, nor can he grant any casual leave or other leave. The Accounts Officer has power to write confidential reports, but the Chief Accounts Officer and the Controller of Accounts have the right to make amendments in the said report. Although the Accounts Officer sits as a Member of the Selection Panel in the Circle so far as non-technical

staff is concerned, the other Members are Superintending Engineer and Non-technical Officer Class I. The Tribunal also came to the conclusion that the Accounts Officer is required to discharge duties mainly relating to accounts section, which are merely in the nature of scrutiny or checking of the returns with the help of his staff, but he is not clothed with managerial or administrative powers as he has no power to grant leave, or power to appoint any member of the staff or to take any disciplinary action against any employee. The Tribunal, therefore, came to the conclusion that the Accounts Officer does not have any managerial or administrative function and, therefore, the Accounts Officer is a `workman', within the meaning of the Industrial Disputes Act.

6. On behalf of the appellants, it was argued that looking to the nature of the duties, which the Accounts Officers are performing, it is clear that they do not have any managerial or administrative powers and if that is so, it should be held that they are `workmen' and, therefore, they are entitled to serve upto 60 years. On behalf of the appellants, it was argued that the Accounts Officers are doing only accounts work without any supervisory or managerial powers or duties. The very nature of the duties of the Accounts Officers is to check the working of the subordinates in the Accounts Branch, such as checking of accounts, bills, etc. and that, therefore, such work is purely a technical-cum-clerical work and in view of the judgment of the Apex Court in National Engineering Industries Limited v. Sri Krishna Bhageerath, AIR 1988 SC 329, it should be presumed that they are `workmen', as, according to the appellants, they are employed for checking and reporting, which is the function of an employee. Regarding the question whether the learned single Judge can interfere in a petition under Article 227 of the Constitution of India against the order of the Industrial Tribunal, the learned single Judge came to the conclusion that whether the inference with regard to the status of the applicants before the Tribunal, viz., whether the Accounts Officers are `workmen' or not, involves application of legal tests and that necessarily becomes a mixed question of law and fact on a jurisdictional issue and it is for the Court to examine the correctness or otherwise of the finding given by the Tribunal.

7. Reference is required to be made to the definition of `workman' under Section 2(s) of the I.D. Act. Section 2(s) reads as under :-

" ... ...
2.Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

xxx xxx xxx

(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature.

... ..."

The learned single Judge has categorized the said definition and came to the conclusion that an employee who is employed in a supervisory capacity goes out of the definition of a workman once he is found to be drawing wages exceeding Rs.1,600/- per month, or he exercises functions mainly of a managerial nature. It is not in dispute that these Accounts Officers were drawing wages

exceeding Rs.1,600/- per month and, accordingly, an employee, employed in a supervisory capacity and drawing wages exceeding Rs.1,600/- per month, goes out of the definition of `workman' even if he does not exercise functions of a managerial nature. At this stage, it is required to be borne in mind that the correct test to find out whether a person is a `workman' or not is to look into the nature of the duties which are required to be performed by a person holding a particular post.

8. In the instant case, considering the judgment of the Industrial Tribunal as well as the judgment of the learned single Judge, we are of the opinion that the duty prescribed for the post of Accounts Officer is of a supervisory character and, therefore, he is not a `workman' under the I.D. Act.

9. The learned single Judge, in paragraph 13 of his Judgment, stated that it is not disputed on behalf of the Accounts Officers that the salary of the Accounts Officers was in the pre-revised scale of Rs.2700-5150 and in the revised scale it is Rs.8500-14250 and, therefore, their salary always exceeded Rs.1,600/- per month from day one. The learned single Judge has also considered, in detail, the nature of the duties of the Accounts Officers and held that it is not disputed that below each Accounts Officer, there is subordinate staff of the strength of 15-16, consisting of Superintending Accountants, Deputy Superintending Accountants, Senior Clerks and Junior Clerks. The Accounts Officer supervises their work and fills in the confidential reports of all the employees working under him. It is true that he does not have final power to grant or reject leave or the power to take disciplinary action against his subordinates, but those are the powers of managerial nature and it is not necessary for a supervisor to exercise managerial powers in order to be excluded from the definition of `workman'. The learned single Judge found that the Accounts Officer is undisputedly supervising the work of his subordinates and those carrying out the functioning of the financial wing and supervises the functioning of the financial wing at the divisional and sub-divisional level and is an Officer in Class I Service.

In our view, therefore, looking to the nature of work prescribed for the post of Accounts Officer and looking to the fact that such Accounts Officer is an Officer in Class I Service, and his salary is exceeding Rs.1,600/- per month, it cannot be said that he is a `workman' coming within the definition of Section 2(s) of

the Act, because he is performing supervisory duties and he is drawing salary exceeding Rs.1,600/- per month. In our view, therefore, the ratio decidendi of the decision in All India Reserve Bank Employees' Association v. Reserve Bank of India, AIR 1966 SC 305, which is in connection with Internal Auditors is not applicable to the facts of the present case. The Court, in that case, was concerned with the powers of Internal Auditors and the Internal Auditor was given power of checking the work of others, and not of supervision. It was held that the work done in the audit department of a Bank is not supervision. The same view was taken by the Supreme Court in National Engineering Industries Ltd. v. Shri Kishan Bhasera & Ors., AIR 1998 SC 329. In both the aforesaid decisions, the Supreme Court was of the view that the Court is required to examine the nature of the main work which the concerned employee is required to do even though he may be incidentally doing other types of work. It is also held that where there is a power of assigning and distribution of work, there is supervision. Therefore, it is clear that where an Officer assigns and distributes the work amongst the subordinates, he supervises their work. We are, therefore, completely in agreement with the view of the learned single Judge to the effect that even though the Accounts Officer may not be exercising managerial functions, he is certainly acting in a supervisory capacity.

10. Reference was made before the learned single Judge about the categories of employees serving as "Assistant Secretary", who were held to be `workmen' by this Court as well as by the Apex Court. However, we are in complete agreement with the learned single Judge that the duties of the Accounts Officer are entirely different from the duties of the Assistant Secretary. The Accounts Officers are always in the Class I Service and Assistant Secretaries are placed in Class II Service by the Board from its inception.

11. Considering the evidence which was led before the Industrial Court and considering the nature of the duty of the Accounts Officer and considering the salary drawn by him, we are of the opinion that the Accounts Officer cannot be equated with `workman' and in view of the definition of the term `workman', the Accounts Officer cannot be said to be a `workman', especially when the nature of the duty which is prescribed for the Accounts Officer is of supervisory nature and their salary exceeds Rs.1,600/- per month. What is important is that the duty prescribed for the post of Accounts Officer is of supervisory nature and, therefore, such Accounts Officer

cannot be branded as `workman'. Similarly, so far as the challenge to Regulation 72 of the Service Regulations framed by the Board is concerned, it is a part of Statutory Regulation framed by the Board under the Electricity Supply Act, 1948.

Whether an Officer in Class I Service should be superannuated on attaining the age of 58 years or 60 years, can be said to be a "policy decision" and it is within the powers of a Statutory Body like the Board to take such a policy decision. However, in any case, it is found that the Accounts Officers are not `workmen' and, therefore, challenge to the said Regulation is more or less academic. The retirement age of Accounts Officers is fixed at 58 years and such Accounts Officers are, therefore, not entitled to continue till 60 years.

12. Considering the reasoning of the learned single Judge, we are of the opinion that the learned single Judge was perfectly justified in interfering with the Award of the Industrial Tribunal. The Industrial Tribunal has not examined the issue involved in its proper perspective. It came to the conclusion that unless and until the Accounts Officers perform managerial functions, they can be treated as `workmen'. However, the Accounts Officers are discharging supervisory functions and their salary exceeds Rs.1,600/- per month and, therefore, they cannot be treated as `workmen' under the provisions of the Act. The Industrial Tribunal has completely lost sight of this aspect of the matter and this part of the definition and, therefore, the said order was rightly interfered with by the learned single Judge.

13. Mr.N.K. Thakkar, learned Advocate, however, has strongly argued that since the Accounts Officers are not performing managerial functions, it should be held that they are `workmen'. Mr.Thakkar has also given Written Submissions, which we have taken on record. In the Written Submissions, it is stated that memo of L.P.As. may be treated as part of written submissions. In the written submissions, it is stated that the learned single Judge has not considered the judgment of this Court in Gujarat Electricity Board v. Gujarat Electricity Employees' Union, 1993(1) GLH 686. In the aforesaid case, it was contended for the first time by the petitioner that the Reference made to the Tribunal was incompetent and the Tribunal has no jurisdiction to deal with the same. Since no such contention was raised before the Tribunal, this Court came to the conclusion that this being a mixed question of law and fact, it

cannot be allowed to be raised for the first time in a writ petition under Article 226 of the Constitution of India. In our view, the aforesaid judgment has no application to the facts of the present case, because, the issue involved is whether the Accounts Officer is a `workman' or not and from the beginning, it is the case of the Board that the Accounts Officers are not `workmen' and that was the main issue which was adjudicated by the Industrial Tribunal. Not only that, substantive Special Civil Applications have been filed before this Court, which were also disposed of by the learned single Judge by the common order. The Court was not concerned in that case whether Accounts Officers are `workmen' or not. In that view of the matter, in our view, the said judgment has no relevance so far as the facts of the present case are concerned. It is also averred in the Written Submissions that the learned single Judge has erred in not examining the challenge to the validity of Regulation 72 of the Regulations made by the Board. The said submission is also not correct. The learned single Judge has already dealt with the same in his judgment, but, apart from that, in view of the reasoning of the learned single Judge to the effect that the Accounts Officer is not a `workman', then, naturally, such Account Officer is not entitled to continue upto the age of 60 years, which is the age prescribed for the `workmen', under Section 2(p) Settlement and, therefore, for other categories of Officers, the age of superannuation fixed is 58 years. It is also averred in the Written Submissions that the appellants are governed by the Model Standing Orders and not by the Regulations framed by the Gujarat Electricity Board and as per the Model Standing Orders, the age of retirement is 60 years. As per the reasoning given in the earlier part of our order, this argument is required to be rejected straight away. There is no question of application of Model Standing Orders to them and there is no question of giving benefit of 60 years for the purpose of superannuation which is available only to the workmen of the Board.

14. In the written submissions, it is also stated that the appellants were performing the duties which are clerical and ministerial in nature and were not having the powers which were either supervisory, administrative, financial or managerial. We have dealt with the said aspect earlier and, therefore, it is not necessary to deal with the same again. The functions and duties of an Accounts Officer is of supervisory nature and the learned single Judge has also, in detail, considered the said aspect in his judgment. We, therefore, do not find any substance in the Written Submissions on the aforesaid

point regarding the nature of the work which is performed by the Accounts Officer.

15. A reckless statement is made by Mr.Thakkar, learned Advocate, in his Written Submissions to the effect that the learned single Judge has taken a perverse view of the factual conclusions arrived at by the Industrial Tribunal after considering the evidence led by both the parties. In his written submissions, he has stated that the `Accounts Officer' is falling within the category of `workman' and the Industrial Tribunal has rightly decided that the Accounts Officer is a `workman' and the learned single Judge has taken a perverse view in the matter.

The learned single Judge, after considering the evidence on record and after considering the affidavit-in-reply and after hearing both the sides, has given a decision that the Accounts Offices are performing supervisory type of work. In our opinion, the view taken by the learned single Judge is absolutely correct and the said decision is reached on the basis of the evidence on record and on the basis of the duties prescribed for the post of Accounts Officer.

Mr.Thakkar relied on the decisions of the Apex Court in Ananda Bazar Patrika (P) Ltd. v. The Workmen, 1970(3) SCC 248, Lloyds Bank Ltd. v. Panna Lal Gupta and others, AIR 1967 SC 428 and South Indian Bank Ltd. v. A.R. Chacko, (1964) 5 S.C.R. 625.

Judgments of this Court as well as of the Apex Court, to which reference was made by Mr.Thakkar in his Written Submissions, have no relevance to the facts of the present case as the point which is required to be considered is whether the Accounts Officers can be said to be performing supervisory work and their salary exceeds Rs.1,600/- per month. As stated earlier, what is required to be considered is that the Accounts Officers are doing supervisory work and, in fact, looking to the nature of the duty, it can be said that they are doing supervisory work and considering the duty which they are performing, it can certainly be said that they are certainly performing supervisory work and in view of that, they cannot be said to be `workmen', and it cannot be said that the Accounts Officers are doing clerical work and they are not discharging supervisory work. The work prescribed for the post of Accounts Officer is of a supervisory nature. The nature of the post is such that looking to the work prescribed for the post, it is clear that it is of a supervisory nature. In that view of the

matter, the judgments made reference of in the Written submissions are not applicable to the facts of the present case. It is not a case where the learned single Judge has given any importance to the designation, but, ultimately, looking to the nature of the duty, he has come to the conclusion that the Accounts Officers are not `workmen'. Nature of the duty of the Accounts Officer has been considered analytically by the learned single Judge and, ultimately, on that basis, conclusion is reached. Considering the reasoning given by the learned single Judge and having considered the nature of duty which is prescribed for the post of Accounts Officer, we are of the opinion that the Accounts Officer of the Board cannot be said to be a `workman'.

18. We are in complete agreement with the judgment of the learned single Judge. We do not find any substance in this group of Letters Patent Appeals and, therefore, the same is dismissed at the admission stage.

August 03, 2001 (D.M. Dharmadhikari, C.J.)

(P.B. Majmudar, J.)

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(apj)